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14

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN JOSE DIVISION

18)
19 JOEL KRIEGER, Individually and on Behalf) Case No. 11-CV-00640 LHK
of All Others Similarly Situated,)
20 Plaintiff,) **Class Action**
21 vs.) **STIPULATION AND [PROPOSED]**
22 AHEROS COMMUNICATIONS, INC.,) **ORDER GOVERNING THE**
23 DR. WILLY C. SHIH, DR. TERESA H.) **PRODUCTION AND EXCHANGE**
24 MENG, DR. CRAIG H. BARRATT,) **OF CONFIDENTIAL AND HIGHLY**
25 ANDREW S. RAPPAPORT, DAN A.) **CONFIDENTIAL INFORMATION**
ARTUSI, CHARLES E. HARRIS,)
26 MARSHALL L. MOHR, CHRISTINE) Judge: Hon. Lucy H. Koh
KING, QUALCOMM INCORPORATED,) Date Action Filed: February 10, 2011
and T MERGER SUB, INC.,)
27 Defendants.)
28)

1 WHEREAS, the parties in the above-captioned action (the “Parties”) and any appeal
2 therein (the “Litigation”) are engaged in proceedings that may include, among other things,
3 the sharing of confidential or proprietary information;

4 WHEREAS, the Parties and/or their shareholders could be jeopardized or prejudiced
5 by the disclosure of non-public financial data, business strategies, product or operational
6 information or other highly sensitive, confidential, privileged, proprietary or otherwise
7 commercially-sensitive information or documents;

8 WHEREAS, the Parties have been given access to certain information which the
9 Parties believe to be confidential, sensitive, personal, commercial, financial or business
10 information;

11 WHEREAS, good cause exists for entry of this Stipulation and Order Governing the
12 Production and Exchange of Confidential and Highly Confidential Information (the
13 “Stipulation and Order”); and

14 WHEREAS, the entry of this Stipulation and Order will promote the fair and
15 expeditious resolution of this Litigation;

16 IT IS HEREBY STIPULATED AND AGREED, pursuant to Federal Rules of Civil
17 Procedure 26(c) and Civil Local Rule 79-5, by and among the Parties hereto through their
18 undersigned counsel, subject to the approval of the Court, that this Stipulation and Order
19 shall govern the handling of documents, depositions upon oral examination, depositions
20 upon written questions, deposition exhibits, responses to interrogatories, responses to
21 requests for admission, responses to requests for documents, expert reports, any written,
22 recorded, graphic or other electronic matter and any other information produced, filed with
23 or submitted to the Court and/or given or exchanged in this Litigation, by or among any
24 Party or non-Party (“Discovery Material”).

25 1. Any Party or non-Party who provides Discovery Material (a “Producing
26 Party”) may designate any Discovery Material as “Confidential” under the terms of this
27 Stipulation and Order if the Producing Party in good faith reasonably believes that such
28 Discovery Material contains non-public, confidential, proprietary, commercially sensitive

1 or personal information, that requires the protections provided in this Stipulation and Order
2 (hereinafter “Confidential Discovery Material”). For purposes of this Stipulation and
3 Order, Discovery Material considered to be Confidential Discovery Material may include,
4 without limitation, all non-public materials containing: (i) financial or business plans or
5 projections; (ii) trade secrets and proprietary technical information; (iii) studies or analyses
6 by internal or outside experts or consultants; (iv) financial or accounting results or data;
7 (v) customer lists, bids, solicitations and information; (vi) competitive analyses;
8 (vii) personnel files or data; (viii) product development and planning; (ix) personal
9 financial, tax or employment information; (x) business, management and marketing plans
10 and strategies; (xi) costs of goods and services; (xii) pricing of goods and services;
11 (xiii) acquisition offers and expressions of interest; (xiv) contracts or agreements with
12 customers, employees, affiliates or partners; (xv) complaints, disputes, litigation, mediation
13 or arbitration with customers, suppliers, employees, affiliates or partners; (xvi) stockholder
14 lists, registers and data; and (xvii) any other information a Producing Party believes to be
15 commercially sensitive or personal information.

16 2. Any Producing Party may designate any Confidential Discovery Material as
17 “Highly Confidential” under the terms of this Stipulation and Order if such Producing Party
18 in good faith reasonably believes that disclosure of the Confidential Discovery Material
19 (other than as expressly permitted pursuant to this Stipulation and Order) would unduly
20 harm the commercial, financial or business interests of such Producing Party, or would
21 otherwise create an undue risk of injury to such Producing Party that would not exist in the
22 absence of such disclosure (“Highly Confidential Discovery Material”). For purposes of
23 this Stipulation and Order, Highly Confidential Discovery Material may include, but is not
24 limited to, proposed strategic transactions and other business combinations, negotiations,
25 inquiries or agreements including, but not limited to, joint ventures, mergers, purchases,
26 buy-outs, consolidations, transfers of interests and partnerships, non-public information
27 constituting trade secrets or other current proprietary technical information, current pricing
28

1 or cost information or information regarding customer contracts, financial or business plans
2 or projections.

3 3. The designation of Discovery Material as Confidential Discovery Material
4 or Highly Confidential Discovery Material shall be made in the following manner:

5 A. In the case of documents or other materials (apart from depositions
6 or other pretrial testimony), by: (i) affixing the legend "Confidential" or "Highly
7 Confidential" to each page containing any Confidential Discovery Material or Highly
8 Confidential Discovery Material, respectively; or (ii) in the case of electronically stored
9 information produced in native format, by including "Confidential" or "Highly
10 Confidential" in the file or directory name, or by affixing the legend "Confidential" or
11 "Highly Confidential" to the media containing the Discovery Material (*e.g.*, CD-Rom,
12 Floppy Disk, DVD).

13 B. In the case of depositions or other pretrial testimony, by: (i) a
14 statement on the record, by counsel, at or before the conclusion of the deposition or
15 testimony; or (ii) written notice, sent by counsel to all Parties within five (5) business days
16 after receiving a copy of the final transcript of the deposition or testimony; provided that
17 only those portions of the transcripts designated as Confidential Discovery Material or
18 Highly Confidential Discovery Material shall be deemed Confidential Discovery Material
19 or Highly Confidential Discovery Material, respectively. In both of the foregoing
20 instances, the designating Party or non-Party shall direct the court reporter that the
21 appropriate confidentiality legend be affixed to the first page and/or all portions of the
22 original and all copies of any transcript containing Confidential Discovery Material and/or
23 Highly Confidential Discovery Material. The Parties may modify this procedure for any
24 particular deposition or other pretrial testimony, through agreement on the record at such
25 deposition or testimony, without further order of the Court. Unless otherwise agreed by the
26 Parties, such testimony shall be treated as Highly Confidential Discovery Material until the
27 time for designation has passed.

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1 C. In the case of any other Discovery Material, by written notice at the
2 time of production that the Discovery Material constitutes Confidential Discovery Material
3 or Highly Confidential Discovery Material, as appropriate.

4 4. The designation of Discovery Material as Confidential Discovery Material
5 or Highly Confidential Discovery Material shall constitute a representation that such
6 Discovery Material has been reviewed by an attorney representing the Party making the
7 designation, and that there is a good faith basis for such designation.

8 5. Inadvertent failure to designate Discovery Material as Confidential
9 Discovery Material or Highly Confidential Discovery Material shall not constitute a waiver
10 of such claim and may be corrected: (i) by supplemental written notice designating such
11 Discovery Material as Confidential Discovery Material or Highly Confidential Discovery
12 Material as soon as such inadvertent failure to designate is discovered; or (ii) in a manner
13 consistent with Paragraph 3. Upon receiving such supplemental written notice, the non-
14 Producing Party shall thereafter treat the Discovery Material so designated as Confidential
15 Discovery Material or Highly Confidential Discovery Material, accordingly, and such
16 Discovery Material shall be fully subject to this Stipulation and Order from the date of such
17 notification forward. In addition, upon receiving such supplemental written notice, any
18 receiving party that disclosed the Discovery Material prior to its designation as Confidential
19 Discovery Material or Highly Confidential Discovery Material shall make a good faith
20 effort (i) to ensure the return or destruction of such Discovery Material, (ii) to ensure that
21 any documents or other materials derived from such Discovery Material are treated as if the
22 Discovery Material had been designated as Confidential Discovery Material or Highly
23 Confidential Discovery Material when originally produced, (iii) to ensure that such
24 Discovery Material is not further disclosed except in accordance with the terms of this
25 Stipulation and Order, and (iv) to ensure that any such Discovery Material, and any
26 information derived therefrom, is used solely for the purposes described in Paragraph 10 of
27 this Stipulation and Order.

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1 6. Confidential Discovery Material may be disclosed, summarized, described,
2 characterized or otherwise communicated or made available in whole or in part only to the
3 following persons:

4 A. Outside counsel and inside counsel for the Parties, and the partners,
5 associates, paralegals, secretaries, clerical, regular and temporary employees, and service
6 vendors of such counsel (including outside copying services and outside litigation support
7 services) who are assisting in the preparation and trial of this Litigation;

8 B. The Parties, including the directors, officers, employees (including
9 but not limited to inside counsel), management personnel and/or advisors and partners of
10 the Parties or any subsidiary or affiliate thereof, who are assisting the Parties in this
11 Litigation, or who appear as witnesses or deponents, and any professional employee of any
12 person providing professional advice to any of the corporate Parties;

13 C. Any person indicated on the face of a document or accompanying
14 correspondence to be the author, addressee, or an actual or intended recipient of the
15 document;

16 D. Subject to Paragraph 8 hereof, experts or consultants assisting
17 counsel for the Parties, and the partners, associates, secretaries, clerical, regular and
18 temporary employees, and service vendors of such experts or consultants (including outside
19 copying services and outside litigation support services) who are assisting in the preparation
20 and/or trial of this Litigation;

21 E. Witnesses or deponents and their counsel, only to the extent
22 necessary to conduct or prepare for depositions or testimony in this Litigation;

23 F. The Court, persons employed by the Court, and court reporters
24 transcribing any hearing, trial or deposition in this Litigation or any appeal therefrom; and

25 G. Any other person only upon (i) order of the Court entered upon
26 notice to the Parties or (ii) written agreement of, or statement on the record by, the
27 Producing Party who provided the Discovery Material being disclosed that such Producing
28 Party consents to such disclosure, and provided that such person signs an undertaking in the

1 form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and
2 conditions of this Stipulation and Order, consenting to the jurisdiction of the Court for the
3 purposes of the enforcement of this Stipulation and Order, and agreeing not to disclose or
4 use any Confidential Discovery Material or Highly Confidential Discovery Material in a
5 manner or for purposes other than those permitted hereunder.

6 7. Highly Confidential Discovery Material may be disclosed, summarized,
7 described, characterized or otherwise communicated or made available in whole or in part
8 only to the following persons:

9 A. Outside counsel for the Parties, and the partners, associates,
10 paralegals, secretaries, clerical, regular and temporary employees, and service vendors of
11 such counsel (including outside copying services and outside litigation support services)
12 who are assisting in the preparation and trial of this Litigation;

13 B. Any person indicated on the face of a document or accompanying
14 correspondence to be the author, addressee, or an actual or intended recipient of the
15 document;

16 C. Subject to Paragraph 8 hereof, experts or consultants assisting
17 counsel for the Parties, and partners, associates, secretaries, clerical, regular and temporary
18 employees, and service vendors of such experts or consultants (including outside copying
19 services and outside support services) who are assisting in the preparation and/or trial of
20 this Litigation;

21 D. Witnesses or deponents and their counsel, during a deposition or in a
22 court proceeding in this Litigation, only to the extent necessary to conduct that deposition
23 or proceeding;

24 E. The Court, persons employed by the Court, and court reporters
25 transcribing any hearing, trial or deposition in this Litigation or any appeal therefrom; and

26 F. Any other person only upon (i) order of the Court entered upon
27 notice to the Parties or (ii) written agreement of, or statement on the record by, the
28 Producing Party who provided the Discovery Material being disclosed that such Producing

1 Party consents to such disclosure, and provided that such person signs an undertaking in the
 2 form attached as Exhibit A hereto, agreeing in writing to be bound by the terms and
 3 conditions of this Stipulation and Order, consenting to the jurisdiction of the Court for the
 4 purposes of the enforcement of this Stipulation and Order, and agreeing not to disclose or
 5 use any Confidential Discovery Material or Highly Confidential Discovery Material in a
 6 manner or for purposes other than those permitted hereunder.

7 8. Notwithstanding the above, Confidential Discovery Material or Highly
 8 Confidential Discovery Material may be provided to experts or consultants only to the
 9 extent necessary for such expert or consultant to prepare a written opinion, to prepare to
 10 testify, or to assist counsel or the Parties, provided that (i) such expert or consultant is using
 11 said Discovery Material solely in connection with the prosecution or defense of this
 12 Litigation, (ii) such expert or consultant is not currently an employee of, or advising or
 13 discussing employment with, or a consultant to, any person known or reasonably believed
 14 to be a competitor of any Party or to be a potential transaction counterparty of any Party to
 15 this Litigation, and (iii) such expert or consultant has previously executed an undertaking in
 16 the form attached hereto as Exhibit A, agreeing in writing to be bound by the terms and
 17 conditions of this Stipulation and Order, consenting to the jurisdiction of this Court for
 18 purposes of enforcement of the terms of this Stipulation and Order, and agreeing not to
 19 disclose or use any Confidential Discovery Material or Highly Confidential Discovery
 20 Material for purposes other than those permitted hereunder. Counsel for the Party
 21 disclosing Confidential Discovery Material or Highly Confidential Discovery Material to an
 22 expert or consultant shall be responsible for obtaining such signed undertaking and
 23 retaining the original, executed copy thereof; provided that non-Party witnesses to whom
 24 Confidential Discovery Material or Highly Confidential Discovery Material is first
 25 disclosed at deposition or trial need not be required to execute an undertaking in order to be
 26 bound by the terms hereof.

27 9. When serving subpoenas on non-Parties, a copy of this Stipulation and Order
 28 (including Exhibit A) shall be included with the subpoena, and the subpoena shall expressly

1 incorporate by reference the terms of this Stipulation and Order. Any Party that has already
 2 served a subpoena on a non-Party, shall serve a copy of this Stipulation and Order on such
 3 non-Party (including Exhibit A).

4 10. Discovery Material, or information derived therefrom, shall be used solely
 5 for purposes of this Litigation and shall not be used or disclosed for any other purpose,
 6 including, without limitation, for any business or commercial purpose or for any other
 7 litigation or proceeding.

8 11. Any pleading, brief, memorandum, motion, letter, affidavit, or other
 9 document filed with the Court, which discloses, summarizes, describes, characterizes or
 10 otherwise communicates Confidential Discovery Material or Highly Confidential Discovery
 11 Material (a “Filing Under Seal”), shall be filed under seal in accordance with the provisions
 12 of Civil Local Rule 79-5, and any other Orders of this Court;

13 12. During the pendency of this Litigation, any Party objecting to the
 14 designation of any Discovery Material as Confidential Discovery Material or Highly
 15 Confidential Discovery Material may, after making a good faith effort to resolve any such
 16 objection, move on reasonable notice for an order vacating the designation. While such an
 17 application is pending, the Discovery Material or testimony in question shall be treated
 18 consistently with the manner in which it was designated. The provisions of this Paragraph
 19 are not intended to shift the burden of establishing confidentiality.

20 13. Entering into, agreeing to and/or producing or receiving Confidential
 21 Discovery Material or Highly Confidential Discovery Material or otherwise complying with
 22 the terms of this Stipulation and Order shall not:

23 A. Operate as or constitute a waiver of any attorney-client, work product
 24 or other privilege;

25 B. Prejudice in any way the rights of any Party or Producing Party to
 26 object to the production of documents or information they consider not subject to discovery,
 27 including pursuant to the automatic stay of discovery provided by the Private Securities
 28 Litigation Reform Act, or operate as an admission by any Party or Producing Party that the

1 restrictions and procedures set forth herein constitute adequate protection for any particular
2 information;

3 C. Prejudice in any way the rights of any Party or Producing Party to
4 object to the authenticity or admissibility into evidence of any Discovery Material;

5 D. Operate as an admission by any Party or Producing Party that any
6 particular Discovery Material constitutes either Confidential Discovery Material or Highly
7 Confidential Discovery Material;

8 E. Prejudice in any way the rights of any Party or Producing Party to
9 seek a determination by the Court whether any Discovery Material or Confidential
10 Discovery Material or Highly Confidential Discovery Material should be subject to the
11 terms of this Stipulation and Order;

12 F. Prejudice in any way the rights of any Party or Producing Party to
13 petition the Court for a further protective order relating to any purportedly Confidential
14 Discovery Material or Highly Confidential Discovery Material; or

15 G. Prevent any Party or Producing Party from agreeing to alter or waive
16 the provisions or protections provided for herein with respect to any particular Discovery
17 Material.

18 14. This Stipulation and Order has no effect upon, and shall not apply to, a
19 Producing Party's use or disclosure of its own Discovery Material for any purpose.
20 Nothing herein shall: (i) prevent a Producing Party from disclosing its own Discovery
21 Material; or (ii) impose any restrictions on the use or disclosure by a Party of documents,
22 materials or information designated as Confidential Discovery Material or Highly
23 Confidential Discovery Material obtained lawfully by such Party independently of the
24 discovery proceedings in this Litigation and not otherwise subject to confidentiality
25 restrictions.

26 15. If Discovery Material that is subject to a claim of attorney-client privilege,
27 attorney work product or any other applicable privilege, immunity or ground for
28 withholding such document from production is inadvertently produced or disclosed

1 ("Inadvertent Production Material"), such inadvertent production shall in no way prejudice
 2 or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege,
 3 work product or other applicable privilege, immunity or ground for withholding such
 4 document from production.

5 A. A claim of inadvertent production shall constitute a representation by
 6 that Party that the Inadvertent Production Material has been reviewed by an attorney for
 7 such Party and that there is a good faith basis for such claim of inadvertent production.

8 B. If a claim of inadvertent production is made pursuant to this
 9 Stipulation and Order, with respect to Discovery Material then in the custody of another
 10 Party, that Party shall: (i) refrain from any further examination or disclosure of the claimed
 11 Inadvertent Production Material; (ii) if requested, promptly make a good faith effort to
 12 return the claimed Inadvertent Production Material and all copies thereof (including
 13 summaries and excerpts) to counsel for the Producing Party, or destroy all such claimed
 14 Inadvertent Production Material (including summaries and excerpts) and certify in writing
 15 to that fact; and (iii) not use the Inadvertent Production Material for any purpose until
 16 further order of the Court.

17 C. A Party may move the Court for an order compelling production of
 18 the claimed Inadvertent Production Material. The motion shall be filed under seal and shall
 19 not assert as a ground for entering such an order the fact or circumstance of the inadvertent
 20 production; nor shall such motion include or otherwise disclose, as an attachment or exhibit
 21 or otherwise, the Inadvertent Production Material (or any portion thereof) which is the
 22 subject of such motion. While such a motion is pending, the Discovery Material in
 23 question shall be treated in accordance with Paragraph 16(B) above.

24 D. If a Party, in reviewing Discovery Material it has received from the
 25 other Party or any non-Party, finds anything it believes in good faith may be Inadvertent
 26 Production Material, that Party shall: (i) refrain from any further examination or disclosure
 27 of the potentially Inadvertent Production Material; (ii) promptly identify the material in
 28 question to the Producing Party (by document number or other equally precise description);

1 and (iii) give the Producing Party ten (10) days to respond as to whether the material was,
 2 in fact, inadvertently produced. If the Producing Party makes a claim of inadvertent
 3 production, the provisions of Paragraph 16(B) above shall apply.

4 16. In the event additional parties are joined in this Litigation, they shall not
 5 have access to Confidential Discovery Material or Highly Confidential Discovery Material
 6 until the newly-joined party has executed and, at the request of any Party, filed with the
 7 Court its agreement to be fully bound by, this Stipulation and Order.

8 17. Non-Parties who are Producing Parties shall have the benefit of this
 9 Stipulation and Order, and shall be entitled to enforce its terms, if they agree to be bound
 10 hereby.

11 18. The Parties agree to be bound by the terms of this Stipulation and Order
 12 pending the entry of this Stipulation and Order by the Court, and any violation of its terms
 13 during that time shall be subject to the same sanctions and penalties as if this Stipulation
 14 and Order has been entered by the Court.

15 19. The provisions of this Stipulation and Order shall, absent written permission
 16 of the Producing Party or further order of the Court, continue to be binding throughout and
 17 after the conclusion of this Litigation, including without limitation any appeals therefrom.

18 20. Within ninety (90) days after receiving notice of the entry of an order,
 19 judgment or decree finally disposing of this Litigation, including any appeal therefrom, in
 20 which Confidential Discovery Material or Highly Confidential Discovery Material is
 21 permitted to be used, and upon the written request of the Producing Party, all persons
 22 having received Confidential Discovery Material or Highly Confidential Discovery
 23 Material shall either make a good faith effort to return such material and all copies thereof
 24 (including summaries and excerpts) to counsel for the Producing Party (at the expense of
 25 the Producing Party), or destroy all such Confidential Discovery Material or Highly
 26 Confidential Discovery Material and certify to that fact. However, counsel for the Parties
 27 shall be entitled to retain court papers, correspondence, pleadings, deposition and trial
 28 transcripts, exhibits and attorney work product (which include within them references to

1 Confidential or Highly Confidential Materials), provided that such counsel (and employees
2 of such counsel) shall not disclose the court papers, deposition and trial transcripts or
3 attorney work product to any person except pursuant to a court order or agreement with the
4 Producing Party.

5 21. In the event that any Confidential Discovery Material or Highly Confidential
6 Discovery Material is used in any court proceeding in this Litigation or any appeal
7 therefrom, said Confidential Discovery Material or Highly Confidential Discovery Material
8 shall not lose its status as Confidential Discovery Material or Highly Confidential
9 Discovery Material through such use unless such Discovery Material becomes part of the
10 public record in this case. Prior to any Court proceeding in which Confidential Discovery
11 Material or Highly Confidential Discovery Material is to be used, counsel shall confer on
12 such procedures as are necessary to protect such Discovery Material.

13 22. If a Party in receipt of Confidential Discovery Material or Highly
14 Confidential Discovery Material pursuant to this Stipulation and Order (a "Receiver")
15 receives a subpoena or other compulsory process from a non-Party to this Stipulation and
16 Order seeking production or other disclosure of such Confidential Discovery Material or
17 Highly Confidential Discovery Material, the Receiver shall give written and telephone
18 notice to counsel for the Producing Party within five (5) business days after receipt of the
19 subpoena or other compulsory process identifying the Confidential Discovery Material or
20 Highly Confidential Discovery Material sought and enclosing a copy of the subpoena or
21 other compulsory process. Except as otherwise ordered by a court of competent
22 jurisdiction, the Receiver shall not produce the Confidential Discovery Material or Highly
23 Confidential Discovery Material called for until the earlier of (a) receipt of written notice
24 from the Producing Party that the Producing Party does not object to production of the
25 Confidential Discovery Material or Highly Confidential Discovery Material or
26 (b) resolution of any objection asserted by the Producing Party; provided however that the
27 burden of opposing the enforcement of the subpoena or document demand shall fall solely
28 upon the Party who produced or designated the Confidential or Highly Confidential

1 Discovery Material, and unless the Party who produced or designated the Confidential or
2 Highly Confidential Discovery Material submits a timely objection seeking an order that
3 the subpoena or document demand not be complied with, and serves such objection upon
4 the Receiver prior to production pursuant to the subpoena or document demand, the
5 Receiver shall be permitted to produce documents responsive to the subpoena or document
6 demand on the response date. Subject to the immediately preceding sentence, compliance
7 by the Receiver with any order, rule, or statute directing production pursuant to the
8 subpoena or document demand of any Confidential or Highly Confidential Discovery
9 Material shall not constitute a violation of this Stipulation and Order. Nothing herein shall
10 be construed as requiring the Receiver or anyone else covered by this Stipulation and Order
11 to challenge or appeal any order directing production of Confidential or Highly
12 Confidential Discovery Material covered by this Stipulation and Order, or to subject
13 himself or itself to any penalties for non-compliance with a legal process or order, or to
14 seek any relief from this Court. In the event that such Discovery Material containing
15 Confidential Discovery Material or Highly Confidential Discovery Material is produced to
16 the non-Party, the Receiver shall use reasonable efforts to secure treatment of those
17 materials by the non-Party in accordance with this Stipulation and Order.

18 23. This Stipulation and Order applies to all Discovery Material produced in this
19 Litigation or exchanged between the Parties in connection with this Litigation, whether
20 produced before or after the entry of this Stipulation and Order and whether produced by a
21 Party or non-Party.

22 24. No person receiving or having access to any Confidential Discovery
23 Material or Highly Confidential Discovery Material shall reveal such Confidential
24 Discovery Material or Highly Confidential Discovery Material, or the information
25 contained therein, to anyone not entitled to receive such Confidential Discovery Material or
26 Highly Confidential Discovery Material under the terms of this Stipulation and Order. If
27 Confidential Discovery Material or Highly Confidential Discovery Material is disclosed to
28 any person other than in the manner authorized by this Stipulation and Order, the Party

1 responsible for the disclosure shall immediately inform the Producing Party of all pertinent
2 facts relating to the disclosure, including the name, address, and employer of each person to
3 whom the disclosure was made. The Party responsible for the disclosure shall also make
4 reasonable efforts to prevent disclosure of Confidential Discovery Material or Highly
5 Confidential Discovery Material by each unauthorized person who receives the
6 information.

7 25. This Stipulation and Order may be changed only by further agreement of all
8 Parties in writing, subject to the approval of the Court, or by order of the Court, and is
9 without prejudice to the rights of any Party to seek modification of this Stipulation and
10 Order by application to the Court on notice to the other Parties hereto.

11 26. Nothing in this Stipulation and Order shall preclude any Party from seeking
12 judicial relief, in good faith and upon notice to the other Parties, with regard to any
13 provision hereof.

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1 Nothing in this Stipulation and Order shall be construed to be a waiver of the Private
2 Securities Litigation Reform Act discovery stay.

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4 Dated: June 8, 2011.

FARUQI & FARUQI LLP

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By /s/ Vahn Alexander
Vahn Alexander
(310) 461-1426
Attorneys for Plaintiff
JOEL KRIEGER

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Dated: June 8, 2011.

PILLSBURY WINTHROP SHAW PITTMAN LLP

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By /s/ David M. Furbush
David M. Furbush
(650) 233-4623
Attorneys for Defendants
ATHEROS COMMUNICATIONS, INC.
WILLY C. SHIH, TERESA H. MENG,
CRAIG H. BARRATT, ANDREW S.
RAPPAPORT, DAN A. ARTUSI,
CHARLES E. HARRIS, MARSHALL
L. MOHR, CHRISTINE KING

Dated: June 8, 2011.

DLA PIPER LLP (US)

By /s/ David Priebe
David Priebe
(650) 833-2056
Attorneys for Defendants
QUALCOMM INCORPORATED and T
MERGER SUB, INC.

SO ORDERED.

Hon. Lucy H. Koh
United States District Court Judge

Exhibit A

AGREEMENT TO BE BOUND BY STIPULATION
AND ORDER GOVERNING THE PRODUCTION AND EXCHANGE
OF CONFIDENTIAL AND HIGHLY CONFIDENTIAL INFORMATION

5 I have read the Stipulation And Order Governing The Production And Exchange Of
6 Confidential And Highly Confidential Information (the “Stipulation and Order”) in the
7 above-captioned action. I understand its terms and agree to be fully bound by them and
8 hereby submit to the jurisdiction of the United States District Court for the Northern
9 District of California for purposes of enforcement of the Stipulation. I further agree not to
10 disclose or use any Confidential Discovery Material or Highly Confidential Discovery
11 Material (as defined in the Stipulation and Order) for purposes other than those permitted
12 under the Stipulation and Order.

13 Dated: _____

Signature

Name _____

Affiliation

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